

D/F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

DEVORN JORDAN, on behalf of himself and all
others similarly situated,

ORDER

Plaintiff,

14-CV-03759 (NGG) (JO)

-against-

MV TRANSPORTATION, INC., MV
CONTRACT TRANSPORTATION, INC., and
MICHELAIRE PHANOR, in his professional and
individual capacities,

Defendants.

-----X

NICHOLAS G. GARAUFIS, United States District Judge.

Plaintiff Devorn Jordan purports to bring this action on behalf of himself and all others similarly situated, alleging that Defendants MV Transportation, Inc., MV Contract Transportation, Inc., and Michelaire Phanor failed to pay him the wages required under federal and state law. (See Second Am. Compl. (Dkt. 22); Third Am. Compl. (Dkt. 40).) On December 5, 2014, Defendants filed a motion to dismiss all claims brought in the Second Amended Complaint against Defendant Phanor, as well as the second through sixth causes of action against all Defendants, for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). (Not. of Defs.' Partial Mot. to Dismiss ("Defs.' Mot.") (Dkt. 27).) On April 14, 2015, the court referred Defendants' motion to Magistrate Judge James Orenstein for a Report and Recommendation ("R&R") pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b)(1). (Apr. 14, 2015, Order (Dkt. 31).) On November 23, 2015, Plaintiff filed a Third Amended Complaint, adding no additional claims but omitting the federal and state law minimum wage claims that he had previously included as the second and fourth claims in his Second Amended Complaint. (See Third Am. Compl.)

On February 3, 2016, Judge Orenstein issued an R&R recommending that the court deny “in all respects” Defendants’ motion to dismiss. (R&R (Dkt. 41) at 1.)

No party has objected to Judge Orenstein’s R&R, and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). (See also R&R at 10 (“Any objections to this Report and Recommendation must be filed no later than February 22, 2016. Failure to file objections within this period designating the particular issues to be reviewed waives the right to appeal the district court’s order.”).) Therefore, the court reviews the R&R for clear error. See Gesualdi v. Mack Excavation & Trailer Serv., Inc., No. 09-CV-2502 (KAM) (JO), 2010 WL 985294, at *1 (E.D.N.Y. Mar. 15, 2010); La Torres v. Walker, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000); cf. 28 U.S.C. § 636(b)(1). Finding no clear error, the court ADOPTS IN FULL the R&R and, accordingly, DENIES Defendants’ motion to dismiss. See Porter v. Potter, 219 F. App’x 112 (2d Cir. 2007) (summary order).

SO ORDERED.

s/Nicholas G. Garaufis

Dated: Brooklyn, New York
February 24, 2016

NICHOLAS G. GARAUFIS
United States District Judge